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No. 80-2078

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DAMES & MOORE, a partnership,
Petitioner,

v.

DONALD T. REGAN, ET AL.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF SPERRY CORPORATION AND SPERRY WORLD TRADE, INC., AS AMICI CURIAE IN SUPPORT OF THE PETITIONER

ALAN RAYWID
Counsel of Record
MARGARET E. ROLNICK
JAMES F. IRELAND, III
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 659-9750

Attorneys for Amici Curiae

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT OF PETITIONER

Pursuant to Rule 36.3 of the Rules of this Court, Sperry Corporation and Sperry World Trade, Inc. ("Sperry") respectfully move the Court for leave to file a brief as *amici curiae* in support of Petitioner. Petitioner Dames & Moore, the federal respondents, and intervenor Bank Markazi have consented to the filing of this brief. The Islamic Republic of Iran and the Atomic Energy Organization of the Islamic Republic of Iran, intervenor-respondents, have refused consent to the filing of an *amicus* brief by Sperry.

As noted in the "Interest of Amici Curiae", Sperry has commenced an action against Iran and its controlled entities, which action is now pending in the U.S. District Court for the District of Columbia. *Sperry Corporation, et al.* v. *Islamic Republic of Iran, et al.*, No. 80-1614 (D.D.C., filed July 1, 1980). In that case Sperry has op-

posed the efforts of the United States to suspend litigation and to vacate a "post-freeze" prejudgment attachment of Iranian bank accounts on the ground that the Executive's actions violate fundamental separation of powers principles.

This case presents issues of overwhelming national importance—namely the constitutionality of executive actions intended to implement the accords between the United States and Iran by seeking the suspension of pending legislation and by nullifying attachments of Iranian assets obtained after November 14, 1979. The asserted power of the executive branch, through Executive Orders and regulations, to oust federal courts of jurisdiction over pending cases and to avoid federal attachment orders raises fundamental questions concerning the distribution of power among co-equal branches of government, which only this Court can authoritatively resolve.

These issues are of vital interest to Sperry and to claimants in approximately 400 other pending cases involving Iran and its property. The participation of other claimants, such as Sperry, will be of benefit to the Court by insuring presentation of the full range of constitutional issues involved. This benefit has been previously acknowledged by this Court's grant of Sperry's motion to file in support of the petition for certiorari, as well as by the Court of Appeals for the District of Columbia Circuit, which granted Sperry's motion to file a brief *amici curiae* in a case presenting identical issues, *American Int'l Group, Inc., et al.* v. *Islamic Republic of Iran, et al.*, No. 80-02791 (D.C.Cir.).

It is therefore respectfully requested that this motion to file a brief as *amici curiae* in support of Petitioner be granted.

Respectfully submitted,

Alan Raywid
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Attorney for Amici Curiae

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BRIEF OF SPERRY CORPORATION AND SPERRY WORLD TRADE, INC., AS AMICI CURIAE IN SUPPORT OF THE PETITIONER

INTEREST OF AMICI CURIAE

Sperry Corporation and Sperry World Trade, Inc. have an interest in resolution of the questions presented for review in this case. They are claimants in *Sperry Corporation, et al.* v. *Islamic Republic of Iran, et al.*, No. 80-1614 (D.D.C., filed July 1, 1980), and have obtained a prejudgment attachment of Iranian bank deposits valued at $7 million. Their interest will be directly affected by this Court's decision involving identical issues. This interest has been previously recognized in grant of *amici's* motion to file in support of the petition for certiorari.

SUMMARY OF ARGUMENT

The Executive's authority to enter into international agreements, although broad, is not unlimited. The President's foreign relations power under Article II does not authorize the President to settle a commercial claim against a foreign state, where Congress has enacted a statute providing U.S. nationals with the right to prosecute such claims in federal courts free of interference from the Executive. The President possesses no statutory authority which would empower him to interfere with the jurisdiction of federal courts to adjudicate cases before them or to nullify prejudgment attachments obtained pursuant to an express license. The Executive's actions in seeking to implement the international agreement with Iran impermissibly infringe on the powers reserved to Congress and the judiciary by the Constitution, and violate the Fifth Amendment by taking property without payment of just compensation.

ARGUMENT

I. The President Has No Constitutional Authority To Suspend Litigation Against Iran Pursuant To An Executive Agreement.

Amici are properly sensitive to the extraordinary tensions created by Iran's seizure and illegal detention of the American hostages, and are well aware of the considerable pressure exerted on the President to secure their release through peaceful means. Notwithstanding the national interest in resolving this difficult international crisis it is clear that any agreement reached wth Iran must be one that is consistent with the Constitution.

A. The President's ability to conclude international agreements is limited by the Constitution and acts of Congress.

The Executive appears unwilling to admit of any limitation on the President's authority to negotiate or conclude an international claims settlement agreement. However, it

is clear that any limitations that are imposed by the Constitution on the subject matter and effect of treaties apply equally to executive agreements.[1] Thus, neither the Executive, nor Congress and the Executive acting together can make an international agreement which violates, for example, the Fifth Amendment.[2] An executive agreement, such as that involved here, which is concluded by the President without Senate approval is subject to additional limitations. While the President may by executive agreement deal "with any matter that under the Constitution falls within the independent powers of the President", such agreement becomes effective as *domestic* law only if it is not in conflict with earlier acts of Congress.[3]

The President's power, if any, to enter into the agreement with Iran must stem from an Act of Congress or the Constitution itself. *Marschalk Company, Inc.* v. *Iran National Airlines Corp.*, No. 79-Civ. 7035(CBM) (S.D.N.Y., June 11, 1981) (Slip Op. at 15).[4] Although the Govern-

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[1] L. Henkin, *Foreign Affairs and the Constitution* 180 (1973) (hereinafter cited as "Henkin").

[2] As Restatement (Second) of the Law of Foreign Relations (1965) (hereinafter "Restatement"), § 117, comment (d) explains:

> "*No power granted to the United States by the Constitution is unlimited* . . . Notwithstanding the existence of an affirmative constitutional power in the federal government to deal with a matter by international agreement, the constitutional limitations upon action by the government may nevertheless prohibit the making of the agreement. *Such limitations as those contained in the Bill of Rights apply to action taken under the grant of the power to make international agreements just as to action taken under other grants of government power.*"

(All italics in quotations have been added except where otherwise noted.)

[3] Restatement, §§ 121, 144. *See also* 1A Sands, Sutherland Statutory Construction § 32.06 (4th ed. 1972): "Valid enactments of Congress override conflicting provisions of international executive agreements irrespective of which came first in point of time."

[4] On remand from the Second Circuit with express direction to resolve the constitutional issue presented here. *New England Merchants National Bank* v. *Iran*, Nos. 80-6254-6349 (2d Cir. April 9, 1981).

ment claims that the President has exercised his "inherent" power to settle international claims, the source of this authority is not identified. The power of the President to conduct foreign affairs, while not an express power, is considered to be an implied power derived from his authority to appoint and receive foreign ambassadors,[5] and from the provision vesting executive power in the President. U.S. Const. art. II, §§ 1-3.

The Constitution vests Congress with express authority to "regulate commerce with foreign nations", U.S. Const. art. I, § 8, cl. 3,[6] and with the power:

> "[T]o make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and *all other* powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." U.S. Const. art. I, § 8.

Congress also possesses power to determine the jurisdiction of inferior federal courts. U.S. Const. art. I, § 8, cl. 2, and art. III, § 1. Any exercise of these combined powers by Congress with respect to foreign commerce or the presentation of commercial claims against a foreign state in federal courts may limit the assertedly "independent" authority of the President's power to "settle" foreign claims by executive agreement.

The tension between the exercises of executive and legislative power was recognized in *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579, 635-38 (1952), where Justice Jackson (concurring) examined the extent

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[5] The power "to receive ambassadors" contained in Article II, § 3 has been criticized by constitutional scholars as a "flimsy" basis for conclusion of executive agreements settling international claims. R. Berger, *Executive Privilege: A Constitutional Myth* 153 (1974).

[6] In *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat) 1, 86 (1824), the Supreme Court recognized that the power over foreign commerce ". . . is vested in Congress as absolutely as it would be in a single government".

to which the President's power may fluctuate as a result of an exercse of legislative power by Congress. Thus, Justice Jackson reasoned that where

> "[t]he President acts in the absence of either a Congressional grant or denial, he can rely only on his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority." *Id.* at 637.

However, when the President takes measures

> "[i]ncompatible with the expressed or implied will of Congress, his power is at at its lowest ebb, for then he can rely only upon his own constitutional powers *minus* any constitutional powers of Congress over the matter." *Id.* at 637-38.

In the area of foreign relations the President possesses broad, but not exclusive, power to act. The power to enter into executive agreements with foreign nations is shared concurrently with the power of Congress to regulate foreign commerce and to make all laws necessary and proper for execution of the functions of the Government. It is within the context of these limitations that the scope of the President's asserted power to "settle" international claims must be measured. Where, as here, Congress has enacted legislation establishing federal jurisdiction for resolution of commercial claims against foreign states, the President lacks constitutional authority either to "settle" such claims or to divest the federal courts of their jurisdiction to decide them.

B. Submission of claims against Iran to the jurisdiction of the federal courts under the FSIA deprives the President of authority to "settle" such claims by executive agreement.

The crucial separation of powers problem raised by the President's attempt through executive orders and implementing regulations to secure the suspension and ultimate termination of claims already within the jurisdiction of

the federal courts under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602 *et seq.* ("FSIA"), cannot be obfuscated by extravagant claims of executive power over foreign relations. In the FSIA Congress vested the federal courts with *in personam* jurisdiction over claims as to which a foreign state is not entitled to immunity, 28 U.S.C. § 1330(a). Congress gave federal courts the exclusive power to determine a foreign state's entitlement to sovereign immunity, and, where no immunity exists, the statute provides that "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances". 28 U.S.C. § 1606.

The FSIA was intended to eliminate the influence of the executive branch in those cases where private parties were attempting to collect damages from foreign states based on commercial activities. Thus, the House Report specifically states:

> "A principal purpose of this bill is to transfer the determination of sovereign immunity from the executive branch to the judicial branch, thereby reducing the *foreign policy implications of immunity determinations and assuring litigants that these determinations are made on purely legal grounds and under procedures that insure due process.*"[7]

Under prior practice, the State Department was responsible for deciding whether a foreign state's claim of sovereign immunity from suit would be recognized, and, where the State Department decided to recognize such immunity, the litigation would be dismissed.[8] This process often led to unfairness to American citizens, and State Department

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[7] H.R.Rep. No. 1487, 94th Cong., 2d Sess. 7, *reprinted in* [1976] U.S. Code Cong. & Ad. News 6604, 6605 (hereinafter "FSIA House Report").

[8] *See, e.g., Ex Parte Peru*, 318 U.S. 578 (1948), where the Court reasoned that the State Department's determination of sovereign immunity must be accepted as a conclusive determination by our political branch of government.

representatives were among those who urged that the law was necessary:

> "To assure that American citizens are not deprived of *normal legal redress* against foreign states who engage in ordinary commercial transactions or who otherwise act as a private party would." [9]

One of the overriding concerns of Congress in enacting the FSIA was thus to "depoliticize" the process by which a foreign state's claim of immunity from suit was resolved.[10]

The agreement between the United States and Iran requires the "termination" of all pending litigation against Iran.[11] Executive Order 12294, issued by President Reagan on February 24, 1981, requires "suspension" of claims against Iran, except as they may be presented to the arbitral tribunal. 46 Fed. Reg. 14,111 (Appendix at A-52). Despite this change in terminology, it is clear that the Executive is seeking to withdraw pending cases from the jurisdiction that Congress conferred upon the federal courts in the FSIA, without the consent of the claimants.

In an effort to avoid the constitutional difficulties presented by its attempt to terminate pending litigation against Iran, the Government has relied upon two principal arguments. First, it is asserted that the executive agreement with Iran effects a change in substantive law which the courts are bound to apply. Second, it is claimed

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[9] *Hearings on H.R. 11315, Subcomm. on Administrative Law and Governmental Relations, House Comm. on Foreign Rel.*, 94th Cong., 2d Sess. 24 (1976) (hereinafter "1976 FSIA Hearings"), (Statement of Monroe Leigh, Legal Adviser, Dept. of State).

[10] *Jet Lines Services, Inc.* v. *M/V Marso El Hariga*, 462 F.Supp. 1165, 1170 (D.Md. 1978).

[11] Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning Settlement of Claims by the Government of the United States of America and the Islamic Republic of Iran (Appendix at A-30).

that the FSIA "merely" codified the restrictive theory of sovereign immunity and, consequently, the grant of jurisdiction contained in that statute is simply irrelevant when the President, in the exercise of his "foreign relations" powers, deems it necessary to settle certain claims. Although these arguments have convinced the District of Columbia Circuit and First Circuit to uphold the Executive, these decisions are erroneous and must be reversed.[12]

In support of the proposition that the executive agreement with Iran changes substantive law, the Government relies upon the rule expressed in *United States* v. *Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801), that a treaty entered into after a judgment was rendered must, if constitutional, be given effect on appeal. This argument overlooks a basic distinction between *Schooner Peggy* and the cases affected by the Iranian accords. *Schooner Peggy* involved a treaty between the United States and France requiring mutual restoration of captured property, which was given effect on appeal to defeat a prior award of a French vessel as a "prize" to the American sailors who had captured it. The intervening treaty "positively change[d] the *rule* which govern[ed] the case," *id.* at 109-10, by determining rights to ownership of the vessel.

Unlike a treaty, the executive agreement with Iran has not received approval by Congress, and neither the Gov-

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[12] *American Int'l Group Inc., et al.* v. *Islamic Republic of Iran, et al.*, No. 80-1779 (D.C. Cir. June 5, 1981); *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority, et al.*, No. 80-1027 (1st Cir. May 22, 1981). These cases seem unduly influenced by the exigencies of obtaining hostage release. Hard cases make bad law. However compelling the Executive's commitment to order and to judicially defend the transfer of funds, any such action must be consistent with constitutional strictures. Moreover, approval of the transfer attempted here, merely because the obligation to return Iranian funds was obtained under duress, has no long-term beneficial effect for the United States. On the contrary, it makes the Executive, and in turn the American Government, exceedingly vulnerable to similar unlawful demands.

ernment nor any of the opinions purporting to apply *Schooner Peggy* to this situation identify what precise change in the substantive law applicable to the pending Iranian cases has occurred.

The courts in *American International Group* and *Chas. T. Main, supra,* both found that the agreement with Iran had "settled" those claims within the jurisdiction of the arbitral tribunal such that plaintiffs were unable to state a "claim on which relief could be granted". However, this conclusion appears to be no more than a restatement of the original contention that there has been a change in "substantive" law. As Judge Duffy observed in *Marschalk Company Inc., supra,* the only thing settled by the executive agreement with Iran was the "hostage crisis". Noting that the agreement with Iran merely transferred the resolution of pending claims from federal courts to an arbitral tribunal, without giving claimants anything of value,[13] he stated:

> "There is no settlement of a case where the adjudication of the rights of the parties is merely transferred to another forum". Slip Op. at 47.

In no sense does the executive agreement "moot" the controversy in this or any other pending case against Iran or effect a change in substantive law, such that *Schooner Peggy* would apply. A change of jurisdiction is merely a procedural change. *See Haney* v. *Chesapeake & Ohio Railroad Company,* 498 F.2d 987, 992 (D.C. Cir. 1974).[14]

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[13] Judge Duffy expressly rejected the argument that Iran's waiver of sovereign immunity and act of state defenses or its agreement to pay arbitral awards from the security fund constituted concessions where the defenses would have been unavailable in commercial litigation under the FSIA and plaintiffs had fully secured payment of any judgment by prejudgment attachment. *Marschalk,* Slip Op. at 46-47.

[14] This statement is true even where arbitration is involved. As [then] Judge Cardozo explained: "[A]rbitration is a form of procedure whereby differences may be settled . . . It vindicates by a

In those instances where the courts have applied a change in substantive law to a pending case, such change, whether it occurred as a result of legislative action or judicial interpretation, affected the merits of the underlying controversy between the parties.[15] This is not the case here.

Moreover, the Executive fails to identify the source of this claimed power to effect a change in "substantive law" sufficient to override the mandate of the FSIA, which provides:

> "The district courts *shall* have original jurisdiction . . . of *any* nonjury civil action against a foreign state . . . as to *any* claim for relief in personam with respect to which the foreign state is not entitled to immunity". 28 U.S.C. § 1330(a).

Nor has any authority been identified which would negate the rule that a foreign state not entitled to immunity, "shall be liable . . . to the same extent as a private individual under like circumstances." 28 U.S.C. § 1606.

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new method *the obligation then existing*". *Berkovitz* v. *Arbib & Houlberg, Inc.*, 230 N.Y. 261, 262, 130 N.E. 288, 290 (1921). *See also, Ames* v. *Merrill Lynch, Pierce, Fenner and Smith*, 567 F.2d 1174, 1180 (2d Cir. 1977); *Montana Power Co.* v. *F.P.C.*, 445 F.2d 739, 748 (D.C.Cir. 1970).

[15] *See, e.g., Socialist Labor Party* v. *Gilligan*, 406 U.S. 583, 589 (1972); *Diffenderfer* v. *Central Baptist Church*, 404 U.S. 412, 415 (1972) [Challenges to constitutionality of statutes held moot when during the pendency of the suit the state legislature amended or repealed provisions under review]; *Hall* v. *Beals*, 396 U.S. 45 (1969) [Challenge to state's six-month residency requirement to vote dismissed as moot when election law was amended to require only two-months' residency]; *Gibbes* v. *Zimmerman*, 290 U.S. 326, 333 (1933) [Suit seeking to compel appointment of a receiver to liquidate bank assets dismissed after legislation was passed to require bank's liquidation]; *United States* v. *Alaska Steamship Co.*, 253 U.S. 113, 115-16 (1920) [Challenge to ICC's authority to order use of prescribed bills of lading dismissed when Congress enacted legislation setting forth new requirements concerning form of bills of lading].

In *Marschalk, supra,* the court expressly ruled that the President could not pursuant to an executive agreement take actions which limited the jurisdiction conferred on federal courts under the FSIA. (Slip Op. at 28). As the court pointed out, Congress in 1976 specifically refused to give the President the power

> "To enter into agreements with other nations which would circumscribe the jurisdiction of the United States courts over international commercial claims under the FSIA." *Id.* at 26.

The overriding intention of Congress to insulate commercial claims against foreign states generally from executive branch influence and the fact that Congress had eliminated a provision which would have made the FSIA's immunity provisions subject to future international agreements,[16] persuaded the court that any inherent presidential power over "foreign affairs" could not authorize the "suspension" of litigation sought by the United States. As the court reasoned:

> "It would be totally incongruous if Congress took away from the executive the power to dispose of certain lawsuits against foreign governments by 'suggestions of immunity' and yet intended to permit the same result by international executive agreements." *Id.* at 30.

These considerations convinced the court that the President's attempt to suspend claims pending before the federal courts constitutes a violation of the principles of separation of powers.[17]

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[16] *See* FSIA House Report at 10; *Marschalk, supra,* at 30-35.

[17] Similarly, the court in *Electronic Data Systems Corp. Iran* v. *Social Security Organization of the Government of Iran,* No. 3-79-218-F Slip Op. at 23 (N.D. Tex. June 7, 1981), found that the Executive lacked authority to prescribe a new rule of law "which had the effect of negating valid exercises of judicial power." *Contra, American International Group, et al.* (D.C.Cir.); *Chas. T. Main Int'l.* v. *Regan,* (1st Cir.), *supra.*

Despite the Government's assertions that the President's "foreign relations" power includes the authority to suspend jurisdiction under the FSIA, it is clear that the Executive has never previously perceived its power over federal litigation so broadly. In fact, in 1958 the State Department concluded that the President lacked the power to make an executive agreement with Norway to submit a case, which was then pending in the Court of Claims, to an international arbitral tribunal. *See* Memorandum, "Hannevig Case," July 18, 1958, MS, Department of State, file 211.5741-Hannevig, Christoffer/7-1858, *reprinted in* 14 Whiteman, Digest of International Law, 248-49 (1967) (hereinafter "14 Whiteman"). In that instance, the State Department reasoned that Hannevig, a Norwegian national, had a statutory right to proceed with his claim against the United States in the Court of Claims, noting:

> "The Department has consistently taken the position that *since Hannevig had the right to have his claim adjudicated in the Court of Claims . . . an adjudication before an international tribunal would not be warranted.*" 14 Whitman at 248-49.

As a matter of executive *authority*, the State Department expressed grave doubt

> "that the President has power to make an agreement, *without Senate consent*, to submit the Hannevig claim to an international arbitral tribunal." *Id.*

In the FSIA Congress has exercised its express constitutional powers over foreign commerce and the federal courts to vest the federal courts with jurisdiction over commercial claims against a foreign state. An executive agreement that purports to declare a new "rule of law", the effect of which is to prevent a coordinate branch of Government from exercising powers vested in it by the Constitution violates the principle of separation of powers

and cannot be enforced. *See, e.g., United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872).[18]

C. Judicial or legislative approval of prior international settlements does not support the Executive's claimed authority to implement the agreement with Iran.

The Government has attempted to place the agreement with Iran within the context of a "historical practice" of international claims settlement agreements. However, many of the authorities relied upon by the Government antedate the FSIA and their reasoning cannot be extended to the present situation. Two flaws in the Government's reliance on prior claims settlements are apparent. First, the Government fails to differentiate between the types of claims settled under the prior executive agreements and those involved here. Second, the Government fails to take into account the distinction between state and federal laws for the purpose of determining the domestic effect of an executive agreement under the Supremacy Clause.[19]

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[18] *See Marschalk, supra*, Slip Op. at 56-57. In the past the courts have refused to enforce international agreements which violate the principle of separation of powers. Thus, in *United States* v. *Guy W. Caps, Inc.*, 204 F.2d 665 (4th Cir. 1953), *aff'd on other grounds*, 348 U.S. 296 (1955), the court ruled that the President lacked authority to enter into an executive agreement with Canada that conflicted with the Agricultural Act of 1948. *See also Consumers Union of U.S. Inc.* v. *Rogers*, 352 F.Supp. 1319 (D.D.C. 1973), where the court struck down voluntary restraint arrangements among foreign steel companies, negotiated by the State Department, upon a finding that the agreement violated the Sherman Act.

[19] Under the Supremacy Clause an executive agreement can supersede inconsistent state law, but not federal law. Restatement § 144. *See, e.g.*, Ohly, *Advice and Consent: International Executive Claims Settlement Agreements*, 5 Cal.W. Int'l L.J. 271, 291: "The Supreme Court has not yet been presented with a situation in which an executive agreement entered into on sole authority of the President is claimed to supervene a prior congressional statute which has an *international* effect."

The Government has asserted that citizens' claims against Iran are "claims" of the United States and thus may be settled even without the consent of the claimant. However, the proposition that the claims of nationals against a foreign state belong to the United States, is based upon an assumption that under international law no remedy for such claims otherwise existed, and is no longer valid.[20]

With the enactment of the FSIA, the Executive's authority to settle "commercial claims" already committed to the courts disappeared. *Chas. T. Main Int'l., Inc.* v. *Khuzestan Water & Power Authority, et al.*, No. 80-1027, Slip Op. at 5 n. 5 (1st Cir. May 22, 1981) (concurring opinion). Thus, where a right to pursue a claim against a foreign government exists, the United States loses its ability to "settle" such claim over the objections of the claimant, at least without payment of just compensation. *Marschalk, supra,* at 61-63; *Chas. T. Main Int'l, supra,* Slip Op. at 5 n. 5 (concurring opinion).

A majority of the recent international settlement agreements negotiated by the United States have involved expropriation of the property of U.S. citizens abroad, for which there is still no recovery in the United States.[21]

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[20] *Ohly, supra,* at 279 n. 42. *See* Restatement § 174, Comment b, which provides: "A principle of traditional international law is that only states have rights under international law, and under international procedures persons have generally not had *standing* to initiate their own claims."

[21] The agreement between the U.S. and the Peoples Republic of China, T.I.A.S. 9306 (1979), is a case in point. The agreement provides for payment of $80.5 million as full and final settlement of "the claims of USA and its nationals . . . against the PRC *arising from any nationalization, expropriation, intervention, and other taking* of, or special measures directed against, property of nationals of the USA on or after October 1, 1949 and prior to the date of this agreement." Art. I(a). Similarly, the settlement with Egypt, 27 U.S.T. 4214, T.I.A.S. 8446 (1976) provides a lump-sum settlement for "nationalization or expropriation" (Art. II) and

Still other settlements furnished compensation for war claims or other losses for which recovery was not otherwise available.[22] The majority of the claims involved in prior settlements were *not* commercial claims such as those at issue here.[23] The enactment of the FSIA by providing citizens with a forum for resolution of those disputes, free from executive interference, precludes the United States, where that forum has been invoked, from disposing of those claims for foreign policy reasons.

This Court's earlier decisions regarding the President's power to conduct foreign relations do not support a reading of Article II which would authorize the executive branch to remove a citizen's claim from the jurisdiction of a federal court where it is properly pending. In *United*

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exempts private claims of U.S. nationals. The U.S.-Poland Claims Settlement, 11 U.S.T. 1953, T.I.A.S. 4545 (1960) covers claims for "nationalization, expropriations, debts owed by nationalized industries." The U.S.-Hungary Claims Settlement, 24 U.S.T. 522, T.I.A.S. 7569 (1973), provides for settlement of claims arising from debts, nationalization and other takings.

[22] *See, e.g., Z & F Assets Realization Corp.* v. *Hull*, 311 U.S. 470 (1941), providing for reimbursement of sabotage losses. *See also* Comment *"Self-Executing Executive Agreements: A Separation of Powers Problem"*, 24 Buffalo L.Rev. 137, 152 (1975).

[23] Indeed, it was not the practice of the United States to espouse the commercial contract claims of its nationals against foreign governments. 5 Hackworth, Digest of International Law, 611-12 (1943). A foreign state's failure to pay a private contract has not been considered a violation of international law and under prior law a claimant was generally without a remedy. Although the adoption of the "restrictive theory" of sovereign immunity by the State Department in 1952 was intended to afford United States claimants with the opportunity to adjudicate a commercial claim against a foreign state, the "right" to do so was often thwarted by the State Department's practice of granting immunity on political rather than legal grounds. *See* Leigh & Atkeson, *Due Process in the Emerging Foreign Relations Law of the United States*, 22 Bus. Law. 3 (1966).

States v. *Curtiss-Wright Corp.*, 299 U.S. 304, 320 (1936), the Supreme Court in dicta suggested that the President had "inherent powers" to act in the field of international relations. While Justice Sutherland broadly described the President as "sole organ of the federal government" in foreign relations, he recognized that this inherent power "*like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution.*" *Id.* at 320.

Nor will the Supreme Court's decisions in *United States* v. *Belmont*, 301 U.S. 332 (1937) and *United States* v. *Pink*, 315 U.S. 203 (1942) support the result sought by the Government here. *See Electronic Data Systems*, *supra*, at 22. In *Belmont* the Court ruled that the President had authority to conclude an executive agreement providing for recognition of the Soviet Union, for settlement of claims by the United States and enforcement by the United States of Soviet nationalization decrees. The Court rejected the claim of a U.S. banker that the Litvinov Assignment, by which the United States became successor to the nationalized Soviet property, including the confiscated bank accounts of a Russian corporation, constituted a taking of private property without just compensation. In so ruling, the Court made clear that rights of U.S. citizens were not at stake and that the dictates of the Fifth Amendment were inapplicable to the actions of a foreign government. 301 U.S. at 322.

Four years later in *Pink*, the Court again decided a case involving the settlement of claims and the domestic effect of the Litvinov Assignment. In *Pink*, the Court expressed its view that the "power to remove such obstacles to full recognition as settlement of claims of our nationals . . . certainly is a modest implied power of the President." 315 U.S. at 223. The Supreme Court thus reasoned that a New York court's decree attaching the funds of a nationalized Russian corporation for the benefit of foreign

creditors did not defeat the superior right of the United States to vest those funds for the benefit of its citizens.[24]

The expansive view of presidential authority in *Belmont* and *Pink* does not support the Government's argument that an executive agreement can prevent American citizens from having their claims resolved by federal courts. Both *Belmont* and *Pink* involved the issue of whether an executive agreement settling international claims could prevail over contrary state law.[25] Thus, the result in both *Belmont* and *Pink* was founded on the Supremacy Clause,[26] and neither case supports the view that the Executive possesses an inherent power to deprive U.S. citizens of their claims against Iran or to divest a federal court of jurisdiction properly invoked under the FSIA.

II. The President Lacks Statutory Authority To Order The Suspension Of Jurisdiction Or The Nullificaton Of Attachments Obtained Under The FSIA.

The preceeding section demonstrates that the President's constitutional authority does not provide a sufficient basis for the enforcement of the executive orders

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[24] The creditors who had attached the funds involved in *Pink* were not U.S. citizens, nor did their claims arise out of the nationalized Russian corporation's transactions in New York. Two factors convinced the Court that the Litvinov Assignment should be enforced. *First*, the Court reasoned that the Fifth Amendment did not preclude the United States from securing priority for its nationals as against the claims of creditors from foreign countries; *second*, under the Supremacy Clause the Court reasoned that state law must yield when it is inconsistent with the provisions of a treaty or international agreement. 315 U.S. at 231.

[25] *Marschalk*, *supra*, at 48-50; *Electronic Data Systems*, *supra*, at 22-23. *See* Ohly, *supra*, at 282 n. 5.

[26] *Missouri* v. *Holland*, 252 U.S. 416 (1920), often cited by the Government for the proposition that a claims settlement can annul pending "domestic litigation" merely held that a treaty can supersede conflicting state laws, and thus has no application here.

seeking to implement the international agreement between the United States and Iran.[27] This portion of the brief will show that the President lacks statutory authority to deprive a federal court of jurisdiction in a suit properly brought under the FSIA or to nullify a prejudgment attachment issued by such court.

A. The IEEPA does not authorize the President to suspend prosecution of claims against Iran.

The International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.* ("IEEPA"), authorizes the President to regulate international economic transactions when this country is confronted with a declared national emergency arising from "any unusual or extraordinary threat [from exterior forces] . . . to the national security, foreign policy, or economy of the United States." 50 U.S.C. § 1701. The Act povides that when the President declares a national emergency, he may, *inter alia:*

> [I]nvestigate, regulate, direct and compel, nullify, void, prevent or prohibit any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest. 50 U.S.C. § 1702.

President Carter invoked his powers under this statute on November 14, 1979, when he issued Executive Order No. 12170 "blocking" Iranian assets subject to the jurisdiction of the United States. The Secretary of the Treasury thereafter promulgated regulations barring "transfer" of Iranian property, and authorizing "judicial proceedings" against Iran, 31 C.F.R. § 535.504(a), 44 Fed.Reg. 67,619 (1979).

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[27] For the reasons set forth in Section I, *amici* contend that the Executive lacks constitutional authority to "nullify" prejudgment attachments of foreign property as part of a "claims settlement". *See Marschalk, supra,* at 68 n. 24.

Executive Order 12294 purports to suspend and deny legal effect to all claims against Iran for *equitable* or *other judicial* relief except as they may be presented to the arbitral tribunal, and to transfer to the tribunal authority to make final determinations on the merits of such claims. (Appendix at A-52). In commencing this action, claimants invoked the jurisdiction conferred upon the district courts by Congress under the FSIA. The IEEPA gives the President no authority to regulate the rights of parties or the power of courts to adjudicate claims in domestic litigation.

The IEEPA was enacted in 1977 to limit the exercise by the President of emergency powers under Section 5(b) of the Trading With The Enemy Act ("TWEA"). The focus of the President's restricted national emergency authority was to be, as the House Report acknowledges, "clearly limited to the regulation of *international economic transactions.*" [28] The primary weapon at the President's disposal under the statute was the blocking of foreign assets.[29] Neither the statute nor its legislative history suggests that Congress, merely by enacting this legislation, intended to give the President, as an *incident* of his authority to limit international economic emergencies, the power to interfere with federal jurisdiction over claims against a foreign state as to which a national emergency had been declared.

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[28] H.R. Rep. No. 459, 95th Cong., 1st Sess. 1 (1977) (hereinafter "IEEPA House Report").

[29] As examples of the transactions to be regulated by the President, the Senate Report lists the following:

> "Foreign exchange transactions, transfers of credit or payments between banking institutions where a foreign interest is involved, import or export of currencies, and to control or freeze property transactions where a foreign interest is involved."

S.Rep. No. 466, 95th Cong., 1st Sess. 5 (1977), *reprinted in* [1977] U.S. Code Cong. & Ad. News 4540, 4543 (hereinafter "IEEPA Senate Report").

The President's asserted authority to regulate the claims of U.S. nationals is based on the erroneous notion that such claims are "property" in which Iran has an interest.[30] As Judge Duffy recently observed in *Marschalk*, such characterization is a vain endeavor by the Government to fit

> "[Plaintiff's] claim into one of IEEPA's pigeon holes which would render it amenable to regulation by the President." Slip Op. at 18.

The opinion in *Marschalk* points out two major flaws in the Government's position. First, the court noted, a citizen's claim or contract right is not the type of "property" that Congress intended the President to regulate under IEEPA, because that statute was concerned primarily with tangible assets of foreign states.[31] Second, the court reasoned, the only party that has an interest in the plaintiff's claim or contract rights was the plaintiff. While the court reasoned that the Iranian defendants had an interest in defending against the contract claim, it properly found that such an interest was not "property". *Id.* at 20.

The view that the IEEPA does not authorize executive interference with litigation commenced under the FSIA has been shared by the overwhelming majority of federal courts that have been confronted with the issue.[32] This

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[30] *See, e.g., Chas. T. Main Int'l, supra*, Slip Op. at 5 n. 5 (concurring opinion).

[31] As the court in *Marschalk* observed: "It is clear from the legislative history the *types* of property over which the President has power include only securities and other tangible properties situated in the United States." (Slip Op. at 19) (citing IEEPA H.Rep. at 15).

[32] For example, in *Electronic Data Systems, supra*, Judge Porter ruled that the IEEPA does not authorize nullification of congressionally mandated jurisdiction. (Slip Op. at 21). *See also, American Int'l Group, supra; Chas. T. Main, supra.* The court in *National Airmotive Corp.* v. *Government of Iran*, 499 F.Supp. 401, 405 (D.D.C. 1980), flatly rejected the Government's argument that a

reading of the IEEPA is consistent with the legislative history of that statute as well as prior decisions under Section 5(b) of the TWEA. Under the TWEA the courts have consistently held that litigation resulting in judicial determination of rights between a creditor and an alien debtor is compatible with freezing controls so long as the judgment did not purport to transfer title or effect payment out of blocked funds.[33]

In *Vishipco Line* v. *Chase Manhattan Bank*, No. 77-1251 (S.D.N.Y. Nov. 3, 1978), a case decided under the TWEA, the court specifically rejected the argument that the blocking regulations applicable to South Vietnam deprived a federal court of its diversity jurisdiction to determine the claims of Vietnamese corporations to bank accounts held by the Saigon branch of an American bank.[34] Examining the legislative authority under which plaintiff's assets were

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Treasury regulation, 31 C.F.R. § 535.504, by prohibiting the entry of judgment also precluded the court from making any determination of substantive legal rights in cases involving Iran, noting:

> "A bar on judicial consideration of plaintiff's claims on the basis proposed by the government would legitimize an attempt on the part of the Executive Branch, through Treasury regulations, to limit the jurisdiction of the federal courts. . ."

[33] *See, e.g., Orvis* v. *Brownell*, 345 U.S. 183 (1953); *Zittman* v. *McGrath*, 341 U.S. 446, 457 (1951); *Propper* v. *Clark*, 337 U.S. 472 (1949); and *Ferrara* v. *United States*, 424 F.Supp. 888, 890 (S.D. Fla. 1976).

[34] The regulation at issue in *Vishipco*, 31 C.F.R. § 500.504, is virtually identical to § 535.504 of the Iranian Assets Control Regulations relied upon by the Government. As the *Vishipco* court interpreted it:

> "The prohibition of 31 C.F.R. § 500.504 against 'the entry of any judgment or of any decree' must be construed to forbid *only* those judicial acts that effect a transfer of interest in property. Since plaintiffs in the case at bar seek only to have their rights established so that their interests will be protected until they can secure a license or until the regulations are lifted, *the regulation is no impediment to the assumption of jurisdiction by this court.*" *Id.*

blocked, the court concluded that the TWEA made "no reference to the withdrawal of any jurisdiction from the federal courts." The court added:

> "There is a serious question whether the regulation in question would be a valid exercise of the power delegated by Congress if it were construed in the manner urged by Defendant."

As the foregoing discussion reveals, neither the IEEPA nor its predecessor the TWEA, authorized executive orders or implementing regulations which have the effect of preventing an adjudication of rights between a U.S. national and a foreign state as to which an emergency has been declared. Accordingly, the IEEPA does not provide the statutory authority to "suspend" litigation claimed by the Execuitve here.

B. The IEEPA does not authorize the President to nullify attachments issued by the courts pursuant to an express license.

The executive orders and Treasury regulations purport to "revoke all licenses for acquiring . . . any right . . . by court order, attachment or otherwise, including the license contained in Section 535.504" and to nullify "all rights" deriving from attachments obtained after November 14, 1979. 31 C.F.R. § 535. 218(a) and (b) (Appendix at A-74). The clear intent of these provisions is to retroactively deny legal effect to the prejudgment attachments issued by the federal courts during the period of blocking controls and to insulate the property of Iranian defendants from the liability to attachment that it would otherwise have upon termination of blocking controls. The Executive cannot, under the guise of "revoking" a license, deprive claimants of the rights in property that were created by an attachment order, issued by a federal court consistent with an express license.

This precise issue was considered at length in *Marschalk* where Judge Duffy ruled that the President's powers

under the IEEPA do not include the authority to nullify the rights in Iranian property obtained by a claimant who had obtained an attachment as permitted by the license contained in the regulations. Slip Op. at 68-69.[35] Reviewing the legislative history of IEEPA, Judge Duffy found that Congress gave the President authority to "control or freeze property transactions" only where a foreign interest is involved. Thus, he reasoned, executive action which had the effect of negating a property interest acquired by U.S. citizens pursuant to a "licensed" prejudgment attachment was not within the President's statutory authority. *Id.* at 70.

Judge Duffy found that even the TWEA which permitted the *vesting* of foreign property by the United States, would not have permitted the President to nullify attachment liens obtained by U.S. citizens in foreign property upon the termination of blocking controls, noting:

> "Neither the legislative history of TWEA nor any case falling under it indicate a presidential power to nullify a citizen's court-conferred rights in foreign property." *Id.*

In his analysis of the TWEA, Judge Duffy pointed out that the authority most often relied upon by the Government, *Orvis* v. *Brownell*, 345 U.S. 183 (1953), does not support the Executive's asserted power to nullify attachment liens obtained after the imposition of blocking controls. *Marschalk*, Slip Op. at 71.

In *Orvis* this Court held that a freeze order affecting Japanese property "recognized [plaintiff's] *attachment*

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[35] In *New England Merchants National Bank* v. *Iran Power Generation and Transmission Co.*, 502 F.Supp. 120, 123 (S.D.N.Y. 1980), Judge Duffy ruled that an attachment of Iranian assets obtained after the November 14, 1979 blocking order provided claimants with security for judgments and established priorities vis-a-vis individual claims in the event that the blocking controls were removed. *Accord, Behring Int'l Inc.* v. *Miller*, No. 80-2864, Slip Op. at 11 (D.N.J., Dec. 24, 1980).

liens insofar as they determined relationships between creditor and enemy debtor," 345 U.S. at 186-87, but that such liens did not create a property interest in blocked funds which the Alien Property Custodian was bound to recognize under § 9 of the TWEA.[36] *Orvis* did not hold that an attachment lien was a "nullity" or conditional as between the U.S. creditor and the alien debtor; rather it merely established that such an interest was insufficient to defeat the superior claim of the United States to the property. This distinction convinced Judge Duffy that an attachment lien on Iranian assets obtained during freezing controls remains valid, as against the Iranian property owner, and that the United States lacks authority to nullify rights derived from such attachment. *Marschalk,* Slip Op. at 70-72.

The more limited presidential powers to deal with foreign property contained in the IEEPA indicate that the Government's reliance on *Orvis* is misplaced in another important respect. The attachment lien-holder's rights in *Orvis* were not invalidated vis-a-vis the alien debtor, they were merely found to be inferior to those of the Alien Property Custodian. This recognition of a superior right, however, was based upon the right of the United States to *possession* of the property under a *res* vesting order, prescribing that alien property be turned over to the custodian.[37]

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[36] Section 9 of TWEA authorized a non-enemy who claimed a right, title or interest in money or property that had been wrongfully *seized* by an Alien Property Custodian to file claims for a return of the *property,* or recovery of its full value. 50 U.S.C. App. § 9. Thus, the action seeks to place the claimant in the position of a creditor with a security interest in specific property.

[37] *See also, Zittman* v. *McGrath,* 341 U.S. 471 (1951) ("Zittman II"), where the Court construed the terms of *res* vesting, prescribing that certain attached bank accounts be "turned over . . . to be held, administered and accounted for as provided by law." In

However, under the TWEA, when the right to possession of blocked property was not involved, the United States did not have rights superior to those of an attaching creditor. Thus, in *Zittman* v. *McGrath*, 341 U.S. 446, 463-64 ("Zittman I"), this Court held that where the United States pursuant to a vesting order succeeded only to the "right, title and interest" of an alien debtor in vested property, an attachment lien obtained after a freezing program was in effect was valid as against the alien debtor and, thus, could not be declared a "nullity" as the United States had requested.[38]

The elimination in the IEEPA of the President's powers under § 5(b) of the TWEA to take custody of or seize foreign property further supports the conclusion that the nullification of attachments sought by the Executive cannot be sustained on the strength of prior rulings under the TWEA. In enacting the IEEPA, Congress revoked the President's authority to vest, seize, and *take custody* of foreign property during a declared emergency.[39] Thus, a broad range of Presidential options, not limited to the

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Zittman II the Custodian asserted that the "turnover order" gave him a right to possession of the funds notwithstanding the attachment, and in the Court's view the exercise of the power *to hold* the funds "in the interest of and for the benefit of the United States" was sufficient to transfer a right of possession. 341 U.S. at 473-74.

[38] In its decision in *American International Group*, Slip Op. at 20-23, the D.C. Circuit erroneously concludes that *Orvis* provides authority for the Government's attempt to nullify attachments. The Court's analysis of *Orvis* and *Zittman I* disregards entirely the difference in treatment accorded to attachment liens in situations where the United States asserted a right to *possession of* assets *(Orvis)* as opposed to merely succeeding to the *title* of the debtor *(Zittman I)*. The *AIG* Court's conclusion that the attachments in *Orvis* could be "disregarded" for all but jurisdictional purposes is, quite simply, wrong.

[39] The House Report stresses that IEEPA removes the authority of the President in time of national emergency to "vest any prop-

technical acquisition of title to property, was eliminated in § 1702 of the IEEPA.[40]

Not only were all former seizure provisions stricken from IEEPA,[41] but so, too, were the provisions authorizing the President to appoint an agent to take custody of and account for those assets.[42] The IEEPA contains no procedure whereby persons claiming a right, title or interest in wrongfully seized property can recover it from the Government. Again, every prior version of TWEA, *as well as its current enactment,* have balanced the extraordinary power to take possession of foreign assets with a specific mechanism enabling persons to challenge the improper exercise of that power.[43]

As the foregoing discussion reveals, the only power under the TWEA which in *Orvis* was deemed to give the United States rights superior to those obtained by attachment liens, the power to *seize* and hold foreign assets,

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erty or interest of any foreign country . . . *and to hold, use, administer, sell, or otherwise deal with 'such interest or property' in the interest of and for the benefit of the United States''*. IEEPA House Report at 2.

[40] This interpretation is confirmed by the legislative history of Section 5(b), as enacted in 1941. Both the House and Senate reports specify that Section 5(b) gives to the President "flexible powers, operating through such agency as he might choose, *to deal comprehensively with* the many problems that surround *alien property or its ownership or control in the manner most effective in each particular case.*" S.Rep. No. 911, 77th Cong., 1st Sess. (1941); H.R.Rep. No. 1507, 77th Cong., 1st Sess. (1941).

[41] Also withdrawn from the IEEPA, but included in the TWEA was Section 7(e), which since as early as 1917 served as the authorization for the President's power to seize enemy and foreign property. *See Steohr* v. *Wallace*, 255 U.S. 239 (1921).

[42] *See* 50 U.S.C. App. § 6 (1917, 1918, 1941, 1977). Every version of the TWEA from 1917 to the present has included such provisions to assure the proper administration of foreign property.

[43] *See* 50 U.S.C. App. § 9, 34 (1917, 1918, 1941, 1977).

was expressly excluded from the IEEPA. Accordingly, that statute and the rationale of *Orvis* cannot provide statutory basis for the claimed power of the President to "disregard" or nullify existing attachments.

Finally, the Government has asserted that American creditors who have obtained attachments of Iranian assets never possessed more than a "conditional" interest in those assets because such attachments depended upon revocable Treasury Department licenses. Once the licenses were revoked, it is asserted, the attachments also were nullified. *See, e.g.*, Memorandum in Support of Defendants' Motion to Dismiss, Appendix at A-99. This argument was rejected in *Marschalk*, where the court reasoned that even where a revocable license permits the acquisition of a property interest by attachment, the interest in property so created is not automatically "nullified" when the license is withdrawn. Slip Op. at 78-80.

Judge Duffy acknowledged that while the Executive had undisputed power to revoke the license to attach, such revocation merely prevented acquisition of future attachments, leaving undisturbed those rights in property previously obtained. In so ruling, the Court found the present situation analogous to those where a revocable license to mine land or graze livestock is issued and later revoked. Such revocation, it was noted, prevents future mining or grazing, but does not impair the licensee's right to keep what was already obtained while the license was in effect." As the court observed in *Marschalk*, the only *condition* in the license to attach Iranian assets was that it could be revoked and future attachments prohibited. *Id.* at 79-80.

" *Acton* v. *United States*, 401 F.2d 896 (9th Cir. 1968) *cert. denied*, 395 U.S. 945 (1969) (revocation of license to mine does not interfere with licensee's rights to minerals already mined); *United States* v. *Fuller*, 409 U.S. 488 (1973) (grazing license revoked without interfering with licensee's right to benefit from increased weight of livestock); *Price & Baker* v. *Madison*, 95 N.W. 933 (S.D. 1903) (revocation of license to cut timber does not interfere with licensee's right to keep timber cut but not removed before revocation).

The mere revocation of licenses authorizing attachment, however, can neither strip the existing attachments of their legal effect, nor deprive the creditors who obtained them of their property interest in Iranian assets.

C. The Hostage Act does not provide authority for the President's actions.

The Hostage Act of 1868, 22 U.S.C. § 1732 (1976), does not authorize the suspension of federal court jurisdiction or termination of attachments. In that Act, Congress merely intended to facilitate the release of American citizens detained abroad by clarifying the President's duty to exercise his existing executive power to secure their release. Cong. Globe, 40th Cong., 2d Sess. 4330, 4332 (1868) (remarks of Senator Williams). Essentially, the Act contemplates presidential use of "diplomatic or foreign-service consular" to fulfill this mandate. *Zemel* v. *Rusk*, 381 U.S. 1 (1965); *Redpath* v. *Kissinger*, 415 F.Supp. 566 (W.D. Tex.) *aff'd*, 545 F.2d 167 (5th Cir. 1976). The argument that the Hostage Act authorizes the executive actions in issue here was totally rejected in *Electronic Data Systems Corp.*, *supra* at 20, and by virtually every other court that has considered the issue.

III. The Executive Agreement With Iran Violates The Fifth Amendment.

Amici adopt the argument of Petitioner raised below that the executive agreement violates the Fifth Amendment by depriving claimants of their property rights without due process or payment of just compensation. As stated there, and as established in *Marschalk, supra,* the executive agreement and orders requiring transfer of claims and the dissolution of judicial attachments constitute a taking of property for a public purpose without guarantee of adequate compensation. Accordingly, even if the terms of the international agreement should be implemented, the United States is obliged to insure that those whose property has

been destroyed in the interest of our foreign policy objectives are appropriately compensated.

CONCLUSION

For the foregoing reasons, the Court should declare the executive agreement with Iran and the executive orders and regulations purporting to implement it to be invalid and leave undisturbed the attachment orders and jurisdiction of the federal courts over claims against a foreign state.

Respectfully submitted,

ALAN RAYWID
Counsel of Record
MARGARET E. ROLNICK
JAMES F. IRELAND, III
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 659-9750

Attorneys for Amici Curiae